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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

CLARENCE E. MANSFIELD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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UNITED STATES OF AMERICA,

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To: *The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States*:

Your petitioner, Clarence E. Mansfield (hereafter called defendant), respectfully prays that a Writ of Certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit.

JUDGMENT AND OPINION OF THE COURT BELOW

On July 26, 1967, the Court of Appeals for the Seventh Circuit affirmed a judgment of conviction entered in the United States District Court for the Northern District of Illinois, Eastern Division, sentencing the defendant to a term of one year imprisonment for filing fraudulent income tax returns for the years 1957 through 1960. The Court of Appeals opinion has not as yet been reported; it is printed herewith as Appendix "A".

JURISDICTIONAL STATEMENT

On a trial to the court without a jury, the defendant, a practicing physician, was convicted on four counts charging wilful evasion of income tax for the years 1957, 1958 and 1960, in violation of Title 26, U.S. Code, Section 7201.

On appeal to the Court of Appeals for the Seventh Circuit, the judgment of conviction was affirmed in an opinion filed July 26, 1967. (Appendix "A").

A petition for rehearing was timely filed; it was denied on September 8, 1967. (Appendix "B").

The jurisdiction of this court is invoked under the provisions of Title 18, U.S. Code, 1264(1).

QUESTIONS PRESENTED FOR REVIEW

1. Does a warning, that there was a possibility of a criminal prosecution and that he did not have to talk to the agents or show them any records, given on April 6, 1961 to a taxpayer by a Special Internal Revenue Agent while investigating 1959 tax returns stand as an effective constitutional warning where a different tax agent visited

the taxpayer 15 months later in July 1962 for the purpose of investigating the taxpayer's returns for 1957 through 1960?

2. If a criminal suspect is once warned of his constitutional rights during an interrogation, does such warning permit governmental interrogation without any other warning by another agent 15 months later about other possible crimes?

3. Can the holdings in *Escobedo* v. *Illinois,* 378 U.S. 478 and *Miranda* v. *Arizona,* 384 U.S. 436, be deliberately evaded and avoided by an affirmative Internal Revenue departmental policy not to repeat the constitutional warnings after a 15 month hiatus in an investigation because the warning might "frighten off cooperation which might otherwise be forthcoming"?

4. Does a taxpayer under investigation have the same right to receive a warning of his constitutional rights as a suspect under investigation for murder, bank robbery, kidnaping, rape, burglary, arson, etc?

5. Within the spirit of this court's recent pronouncements on the necessity of criminal interrogators to give constitutional warnings to suspects, may a deliberate governmental policy to practice deceit on the suspect by failing to warn him for fear his cooperation would be withheld be permitted to stand?

6. Was the required criminal intent to evade taxes shown where the evidence demonstrated the doctor's forgetfulness, his illnesses during the years in question, his habitual lengthy workday running to 12 hours, his sloppy bookk eping methods and the fact that both his receptionist-secretary and the person who made out his returns (who was 75 years old and had only an 8th grade

education) had little experience in bookkeeping matters, and the tax discrepancy as found by the government's accountant were disputed at trial by a competent and experienced accountant on behalf of the defendant?

CONSTITUTIONAL AMENDMENTS INVOLVED

The Fifth Amendment to the Constitution of the United States states, in pertinent part:

> "No person . . . shall be compelled in any criminal case to be a witness against himself . . ."

The Sixth Amendment to the Constitution of the United States states, in pertinent part:

> "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

STATEMENT OF THE CASE.

Evidence in connection with the motion to suppress the evidence.

The defendant appeared before the office audit section of the Internal Revenue Department and spoke to Gertrude Anderson, a tax technician in the audit section, on November 23, 1960 (A. 5).

Following this meeting, Miss Anderson referred the matter to the intelligence unit and subsequently, on April 6, 1961, two special agents, John J. Creen and Ralph Bergstrom visited the home of the defendant where he kept his offices (A. 24).

Creen said they identified themselves as special agents and told the doctor that "the special agent's office looks into these matters to see if there has been any wilful

attempt to evade and defeat taxes, and that there was a possible criminal prosecution, and he does not even have to talk to us or show us any record." (A. 24) Defendant testified they did not (A. 20). They were given his log books and other records for the year 1959, which they proceeded to examine (A. 25).

Following that, defendant received a bill from the Internal Revenue Department for $10.00 for a deficiency for the year 1959 which he paid (A. 21). He assumed that the investigation which had been begun by Gertrude Anderson and carried forward by special agents Creen and Bergstrom had been concluded (A. 28).

From April 6, 1961, until July 2, 1962, nothing further appears to have been done in the case (A. 21).

On July 2, 1962, Russell Armstrong, an internal revenue agent, was assigned to the case. He telephoned the defendant to set up an appointment to examine the books for the years 1957, 1958, 1959. He told defendant over the telephone that he was conducting a "joint investigation" for those years, but did not explain what a joint investigation was (A. 11). Defendant denied he was so told (A, 21).

A departmental decision was made not to advise defendant of his rights. When the question came up whether or not Armstrong should inform Dr. Mansfield of his rights ". . . we decided that since another special agent had informed him on a previous occasion, it was not necessary for me to inform Dr. Mansfield of his rights." (A. 19). Armstrong visited the doctor's residence and office on July 6 or July 10, 1962, for the first time (A. 10) and continued his examination until some time in October, 1962 (A. 6). Armstrong took with him a large box containing all of the doctor's log books, patient books and records (A. 12). He

took down the names of attorneys who had appeared in the records as having paid the doctor certain fees (A. 14).

During the course of Armstrong's investigation, he communicated with special agent William Sandroff at least once every two weeks (A. 16). Armstrong testified that special agent Sandroff was in charge of the investigation and that he made reports of his findings at periodical intervals to Sandroff (A. 17).

Armstrong never advised the defendant that he was conducting an investigation which would lead to a criminal prosecution, nor did he tell the doctor there was a possibility of his being prosecuted for income tax evasion (A. 16).

William Sandroff came to defendant's home and office on October 8, 1962, identified himself as a special agent in the Intelligence Unit and advised the doctor that "This was a criminal investigation" (A. 7). He told the doctor "* * * he did not have to say anything to me, if he chose not to do so—anything he said to me could be used in any action, criminal action." (A. 7). Before he visited the doctor, he was working on the case in conjunction with Armstrong (A. 10). He was assigned to the case on July 12, 1962 (A. 6).

The defendant testified he did not know the difference between an internal revenue agent and a special agent and had no reason to believe that the information which he furnished Armstrong was for the purpose of making a criminal case (A. 21-22). Armstrong visited his office for about ten weeks, calling daily (A. 22).

It was on the basis of the books and records mainly obtained by Armstrong that the case was made against the defendant (A. 10).

Evidence on the case in chief.

The government introduced evidence in the form of checks received by defendant from numerous attorneys for medical services performed for their clients as follows:

1957 $8,280.00; 1958 $12,257.30; 1959 $17,345.50; 1960 $11,049.25 (A. 40).

The government also introduced evidence that the income received by the doctor in his office was as follows:

1957 $4,637.75; 1958 $4,504.16; 1959 $3,980.63; 1960 $4,128.00 (E.A., G-42, 43)[1]

The government showed interest income received in 1960 was $209.97; income from welfare organizations was $327.50 for 1959 and $1,265.00 for 1960; and income from the City of Chicago per government exhibits 42 and 43 were as follows:

1957 $3,728,90; 1958 $4,389.58; 1959 $4,325.82; 1960 $5,430.76 (E.A., G-42, 43).

The gross receipts per the government's tabulations for the years in question are as follows:

1957 $21,423.39; 1958 $24,567.48; 1959 $30,781.14; 1960 $25,532.32 (A. 41).

The government's evidence showed an under reporting of income in each of the respective years as follows:

1957 $10,247.62; 1958 $13,066.80; 1959 $17,061.14; 1960 $8,010.32 (A. 42).

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[1] "E.A." refers to Exhibits Appendix.

Defendant introduced evidence showing income, including all of the additions presented by the government as follows:

> 1957 $17,033.77; 1958 $21,855.46; 1959 $26,583.63; 1960 $22,816.22 (A. 55).

The defendant also presented evidence showing expenditures not deducted on the income tax returns as reported as follows:

> 1957 $8,628.42; 1958 $8,195.44; 1959 $15,891.78; 1960 $11,011.55 (A. 3; total of defendant's appendices A & B).

Defendant's expert witness William Corren, a certified public accountant, testified that giving due regard for the government's computations and expenditures by the defendant not deducted, the correct tax due for each year in question was as follows:

> 1957 $1,118.16; 1958 $2,118.34; 1959 $2,251.03; 1960 $1,274.16 (A. 55).

Robert Neal, who prepared defendant's tax returns, testified he was 75 years of age and had an 8th grade education. He made out returns for 21 years (A. 33-34).

Angeline Hardy kept the books for the doctor. Her main function was that of a receptionist-secretary in the doctor's offices. She had no training as a bookkeeper and never kept books before (A. 53).

Dr. Mansfield testified that he was either 60 or 61 years old; he did not recall the exact year of his birth (A. 48). Neither did he recall the years in which he attended Brown University (A. 48), nor the exact year in which he was admitted to the practice of medicine in Illinois (A. 48).

His normal workday was twelve hours a day (A. 48). He saw three types of patients: those he determined to be "welfare patients, sent to him by welfare organizations, patients referred to him by attorneys, and those patients whom he saw in connection with his duties as a police surgeon for the City of Chicago at the police lock-up at 1121 South State Street, Chicago (A. 47-48).

In 1957, the doctor was under treatment by a physician for diabetes, hypertension, obesity, and sinusitis (A. 47). In 1959, he had Bell's palsy of the face and was both under doctor's care and hospitalized (A. 47).

REASONS RELIED ON FOR ALLOWANCE OF WRIT

I.

May deliberate Government deception be permitted to frustrate necessity for proper warning of constitutional rights?

Dr. Mansfield who, the record shows, worked about 12 hours a day at his profession, was visited by Internal Revenue Agent Russell Armstrong on either July 6 or July 10, 1962 (A. 10) for the purpose of examining the doctor's records for 1957, 1958 and 1959. Armstrong had been advised by his superiors in the Internal Revenue Department not to warn the doctor of any constitutional rights. (A. 19) Armstrong testified that when the question whether or not he should inform the doctor of his rights came up " . . . we decided that since another special agent had informed him on a previous occasion, it was not necessary for me to inform Dr. Mansfield of his rights".

But the record fairly shrieks that this departmental decision made in conference was deliberate deceit and fraudulent subterfuge. The so called previous warning took place some 15 months prior, in April 1961, when a special agent, one Creen, interrogated Dr. Mansfield about his 1959 tax return. Although the doctor denied that he had been so warned (A. 20), Creen testified that he told the doctor in April 1961, that "the special agent's office looks into these matters to see if there has been any wilful attempt to evade and defeat taxes, and that there was a possibility of criminal prosecution, and he does not even have to talk to us or show us any records." (A. 24)

But if Creen had so warned the doctor in April 1961, and if because of that warning the Internal Revenue departmental hierarchy decided that Armstrong, who was an ordinary, as distinguished from a special agent, should not give the doctor any constitutional warnings about his rights in July 1962 because of the previous Creen's warning, why then the wholly superfluous warning to the doctor when Special Agent Sandroff showed up at the doctor's house to identify himself as a Special Agent from the Intelligence Unit? Sandroff testified he advised the doctor that "this was a criminal investigation" and that the doctor would not have to say anything to him, if he chose not to do so and that "anything he said to me could be used in any action, criminal action." (A. 7)

However, through the months of July, August, September up to the visit to the doctor in October 1962, Special Agent Sandroff was laying in the weeds. Ordinary Agent Armstrong had access to all of the doctor's books, logs, records, receipts, memoranda, etc. He would make photostatic copies of the documents at will. During these months of investigation when Armstrong had the use of the doctor's records (deliberately withholding any warning that information gleaned might be used against him in a criminal prosecution) he was relaying all of the information to Sandroff, who had been assigned to the case almost simultaneously with Armstrong. (A. 6, 10) It was only when Sandroff had everything he needed to make out what he believed to be a case against the doctor, that he moved in on the kill in October 1962; and it was only then that he gave the wholly superfluous warning.

To be remembered is that after Special Agent Creen had audited and inspected the doctor's books and records pertaining only to his 1959 tax returns, the doctor received

a tax bill for $10 from the Internal Revenue Department and paid it. (A. 21). It was his belief that the matter with respect to the investigation of the 1959 tax return had been completed. That would be any taxpayer's normal belief.

The deliberate subterfuge practiced by the government in derogation of the taxpayer's rights under the Fifth and Sixth Amendments to the Constitution tainted the government's evidence with illegality and fraud. Such practice and deliberate deceit ought not to be sanctioned. Although the trial here was held in December 1965, before the holding in *Miranda* v. *Arizona,* 384 U.S. 436, but after the holding in *Escobedo* v. *Illinois,* 378 U.S. 478, the question is whether the "totality of circumstances" vitiated the voluntariness of the taxpayer's consent. It is clear that attention focused on the doctor as a criminal suspect at the time when Armstrong came to his offices. Just as "an appearance before a special agent is in the nature of an appearance in a criminal investigation . . .". *United States* v. *Silverstein,* 2 Cir. 63, 314 F.2d 789, 790, so the appearance of a special agent (or one working secretly for him) is likewise. As investigation had focused on the defendant as a criminal suspect, the requirements as laid down in *Escobedo* v. *Illinois,* supra, should have been followed.

The opinion of the Court of Appeals, if allowed to stand, will permit widespread governmental deception to avoid and frustrate the constitutional commandment as implemented in the *Escobedo* and *Miranda* holdings. The Seventh Circuit, in justifying the confessed deception of the agents, stated:

> "In the course of oral arguments, counsel for the government suggested frankly that agents must some

times decide whether unnecessary repetition of warnings will not frighten off cooperation which might otherwise be forthcoming. We agree that in this case the tactical decision not to repeat full warnings already given would not render the books and records produced subject to suppression as evidence." (Opinion, Appendix "A", p. 4).

How far removed from the spirit and the language of the holding by this court in *Miranda* v. *Arizona*, 384 U.S. 436 at 467-8 where this court announced strongly:

"At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent. For those unaware of the privilege, the warning is needed simply to make them aware of it—the threshold requirement for an intelligent decision as to its exercise. More important, such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere. It is not just the subnormal or willfully ignorant who succumb to an interrogator's imprecations, whether implied as expressly stated, that the interrogation will continue until a confession is obtained where that silence in the face of accusation is itself damning and will bode ill when presented to a jury. Further, the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.

"The Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given. *Assessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contacts with authorities, can never be more than speculation; a warning is a clear*

cut fact. More important, whatever the background of the person interrogated, a warning at the time of the interrogation is indispensable to overcome its pressures and to insure that the individual knows he is free to exercise the privilege at that point in time.'' (Emphasis added)

II.

Does the holding in Miranda apply to criminal tax investigations?

There is a growing conflict amongst the courts as to whether taxpayers have the same rights under the Constitution as persons under suspicion of more serious crimes such as murder, bank robbery, rape or arson, etc. This court should issue its Writ of Certiorari to resolve that question, which is decided differently throughout the country.

In *United States* v. *Schoenburg,* 19 AFTR 2d 347 (DC Ariz. 1966) the court held that the conduct of the special agent deprived the defendant of his right to counsel under the Sixth Amendment when the defendant was not advised of his right to counsel before an interrogation took place between the agent and the taxpayer, the court holding that *Escobedo* applied because suspicion had begun to focus on the taxpayer. An arrest was held not to be necessary for the application of the *Escobedo* rule. The *interrogation* in *Schoenburg* took place at the taxpayer's place of business, as in the case at bar.

In *United States* v. *Kingrey,* 19 AFTR 2d 762 (DC Fla. 1967) the court applied the holding in *Miranda* to a criminal tax prosecution stating that, ''. . . if this kind of warning is required for bank robbers, rapists or arsonists, it seems to me that the taxpayer should have the same benefit, and I can see no possible way to distinguish in a criminal action that would subject one to possible confinement

in an institution, regardless what the nature of the crime may be." In *Kingrey*, the special agent identified himself as such and advised the defendant of his constitutional right to refuse to answer any questions; but he did not state he was investigating a possible criminal violation of the tax law, and he never advised the defendant of his right to consult with or have a lawyer present.

Similarly, in a case from the Northern District of Illinois from which District this prosecution stems, District Judge Hubert L. Will, held in *United States* v. *Turzynsky*,[1] 268 F. Supp. 847 (decided, June 2, 1967) that evidence obtained by agents from a doctor taxpayer should be suppressed because no warning was given prior to the interrogation and investigation. The court stated that "to hold otherwise would lead to the anomalous conclusion

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[1] Judge Will noted the following in his opinion:

Post-*Escobedo*, pre-*Miranda* cases holding *Escobedo* inapplicable to the instant situation are *United States* v. *Spomar*, 339 F.2d 941 (7th Cir. 1965), cert. denied 380 U.S. 975 (1965); *Kohatsu* v. *United States*, 351 F.2d 898 (9 Cir. 1965), cert. denied 384 U.S. 1011 (1966); and *Rickey* v. *United States, per curiam*, 360 F.2d 33 (9 Cir. 1966).

Post-*Miranda* cases holding *Miranda* inapplicable to the instant situation include: *United States* v. *Fiore*, 258 F.Supp. 435 (W.D. Pa. 1966); *United States* v. *Carlson*, 260 F.Supp. 423 (E.D.N.Y. 1966); *United States* v. *Hill*, 260 F.Supp. 139 (S.D.Cal. 1966); *United States* v. *Shlinsky*, 261 F.Supp. 265 (D.Mass. 1966); *United States* v. *Spinney*, 264 F.Supp. 774 (D.Mass. 1966); *United States* v. *Gleason*, 265 F.Supp. 888 (S.D.N.Y. 1967); *Stern* v. *Robinson*, 67-1 U.S.T.C. 83,727 (W.D.Tenn. 1966); *United States* v. *Bachman*, 67-1 U.S.T.C. 83,772 (W.D. Pa. 1966).

Post-*Miranda* cases where *Miranda* was applied to non-custodial criminal tax investigations include *United States* v. *Kingry*, 67-1 U.S.T.C. 83,604 (N.D. Fla. 1967), and *United States* v. *Schoenburg*, 19 AFTR 2d 347 (D.Ariz. 1966).

that a person suspected of bank robbery, sale of narcotics, murder, rape or other serious crime is entitled to the greater protection of his constitutional rights than a person suspected of violating the Internal Revenue laws."

Morgan v. *United States,* 1 Cir., 377 F.2d 507 (decided, May 16, 1967) and *Mathis* v. *United States,* 5 Cir., 376 F.2d 595 (decided, April 28, 1967) seem to hold to the contrary.

A recent case decided by the Sixth Circuit on June 15, 1967, suggests strongly that this question is ripe for consideration by this court. *United States* v. *Maius,* 378 F.2d 719. There also a defendant was interrogated with respect to the proper reporting of income taxes, and although the agent advised the defendant of his rights under the Fifth Amendment, the agent did not inform the taxpayer that he could have an attorney present during the interview. The court stated:

> "Appellant was not under arrest or under duress in the legal sense of the term when he made the statements in question. A doubt may well assail us as to whether it is fair to a citizen to be summoned before the Internal Revenue agents to be informed that anything he says may be used against him, and then for the agents of the Internal Revenue Service, personifying the authority and punitive nature inherent in law enforcement, to subject a man to questioning and to extract possibly by threats, insinuations, or subtle forms of suggestive coercion, the only evidence on which he can be sent to prison, and to use this evidence to send him to prison. *It would seem, in all fairness, that before he answers such questions and thereby directly incriminates himself, he should be advised of his right to have his lawyer present.* The Internal Revenue Service has lately been subjected to widespread criticism, because of trickery* of some of its agents in

* As in the case at bar.

unconstitutional invasion of a citizen's rights by the use of tapped telephone wires, or "bugging"; and the Commissioner has repudiated and castigated such conduct. No one would believe, however, that a man would appear before the government agents, and answer their questions, if he knew that the effect of his answers would be to send him straight to the penitentiary. But whether fair or not, no court** has held that a man who is not advised of his right to have his attorney present when questioned by an Internal Revenue agent is thereby deprived of his constitutional rights. A citizen summoned before such federal agents had the option to refuse to answer their questions; but there are few who have the toughness of fibre and the technical knowledge of their rights, who would decline to answer questions put to them in these circumstances. *Until we are told by superior authority that a citizen's constitutional rights are imperiled by such procedure, we are constrained to hold that the evidence thereby obtained is admissible in the ensuing criminal trial.*" (Emphasis added).

It is thus demonstrated that the lower courts are needful of further guidance from this court in this area.

CONCLUSION

If the Internal Revenue departmental practice as sanctioned by the Seventh Circuit Court of Appeals is permitted to stand, new and creative methods for avoiding the direct and positive pronouncements of the holdings in *Escobedo* and *Miranda* will be attempted in derogation of the Fifth and Sixth Amendments. This court ought not to sanction a procedure, deliberately engaged in by government agents, which seek to frustrate and avoid the plain holdings of the aforesaid cases.

** But see cases cited above.

Considering the growing body of conflict amongst the various courts in determining whether *Escobedo* and *Miranda* are applicable to non-custodial criminal tax investigations, we respectfully submit the time is ripe for this court to make known its views for the guidance of all of the courts which have this recurring problem.

Respectfully submitted,

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APPENDIX "A"

In the

United States Court of Appeals

For the Seventh Circuit

SEPTEMBER TERM, 1966 — APRIL SESSION, 1967

No. 15802
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
CLARENCE E. MANSFIELD,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

July 26, 1967

Before KNOCH, SWYGERT and FAIRCHILD, *Circuit Judges.*

KNOCH, *Circuit Judge.* Dr. Clarence E. Mansfield, the defendant-appellant, was found guilty in a trial by the Court sitting without a jury on a four-count indictment charging wilful evasion of income tax through filing false and fraudulent returns for 1957, 1958, 1959 and 1960, in violation of Title 26, U.S.C. §7201. He was sentenced to serve one year on each count, the sentences to run concurrently.

Dr. Mansfield contends that:

1. the Court erred in denying his motion to suppress books and records made available to Russell Armstrong,

an internal revenue agent, who did not advise Dr. Mansfield that he was conducting an investigation which could lead to criminal prosecution for income tax evasion;

2. giving due regard to the defendant's age, long hours of work, inept bookkeeping methods, and forgetfulness, the government did not prove the element of wilfulness;

3. the computations of the government were in error and duplicated some figures;

4. recognition was not given to certain allowable deductions which would decrease the amount of tax.

In November, 1960, Dr. Mansfield had spoken to Gertrude Anderson, a tax technician in the Audit Section of the Internal Revenue Department, respecting his 1959 return. She had warned Dr. Mansfield that an agent might visit him.

John Creen testified that he was a special agent of the Internal Revenue Service; that he and Special Agent Ralph Bergstrom visited the defendant at his combined office and residence in Chicago; that they identified themselves and told him they wanted to speak to him about his income tax return. Dr. Mansfield had replied that he thought the matter was closed at the office, but the agents informed him that the matter had been referred to the special agents' office which looked into these matters to see whether there had been any wilful attempt to evade and defeat taxes, that there was a possibility of criminal prosecution and that Dr. Mansfield did not have to talk to the agents or show them any records.

Later in the same visit, when they asked to see his medical records, the agents again informed the Doctor that he did not have to talk to them or submit any rec-

ords to them. When asked whether repeated warnings were not unusual, Agent Creen said that the practice varied from time to time pursuant to current court rulings. He testified that Dr. Mansfield said that he understood and that he had nothing to hide; that the Doctor had then instructed an employee of his to give the agents two record books for 1959 which they were allowed to examine in his absence and made available to them an adding machine.

When Dr. Mansfield testified concerning this visit, he said he thought it occurred in January 1961. He also described the records given to the agents as more extensive than the two volumes described by the agents. He testified further that he was given no warnings, that the agents showed him cards identifying them only as from "Internal Revenue" and asked to see his office records, that he had to go out and he had left them at work in his office with his records. He said he later received a bill from Internal Revenue for $10, which he paid, and he considered the matter closed.

On July 2, 1962, Russell Armstrong, an internal revenue agent in the Audit division, was assigned to this case to make the field investigation which was a "joint" investigation for 1957, 1958 and 1959, as he advised Dr. Mansfield when he telephone him to make an appointment. Dr. Mansfield denied that he was told even that much. Agent Armstrong said he did not explain what a "joint" investigation was, state that he was conducting a criminal investigation in conjunction with the Intelligence Unit of the Bureau of Internal Revenue, or repeat the warnings to which Agent Creen testified.

In a joint investigation a special agent is in charge of the investigation, and some time after the assignment of Agent Armstrong, Special Agent William Sandroff of the Intelligence Unit was also assigned to this investigation.

During July, August and September, 1962, Agent Armstrong made periodic visits to the Doctor's office where he examined a cardboard box of cancelled checks, bank statements, etc., and log books showing income for daily walk-in patients. From time to time he discussed the investigation with Special Agent Sandroff.

At a conference with the special agent assigned to the case prior to William Sandroff, Agent Armstrong said it was decided that it was unnecessary for him to advise Dr. Mansfield of his rights because he had already been so advised by another agent. Dr. Mansfield argues that this was deliberate deceit amounting to subterfuge and misrepresentation and that all evidence obtained by Agent Armstrong ought to have been suppressed.

In the course of oral argument, counsel for the government suggested frankly that agents must sometimes decide whether unnecessary repetition of warnings will not frighten off co-operation which might otherwise be forthcoming. We agree that in this case the tactical decision not to repeat full warnings already given did not render the books and records produced subject to suppression as evidence.

The government observes that Dr. Mansfield made no change in his continued permission for examination of his records even after Agent Sandroff did repeat the prior warnings at the time of his own first interview with Dr. Mansfield in October 1962. This fact is at least

equally persuasive of the government's contention, that the Doctor was never misled, as of the defendant's own assertion that the damage was already done and revocation of the permission would have served little purpose. In any event, during the entire investigation, Dr. Mansfield withheld his record regarding personal injury patients with claims for damages. The District Court did not err in denying the motion to suppress. *U.S.* v. *Spomar*, 7 Cir., 1964, 339 F.2d 941, 943, cert. den. 380 U.S. 975, reh. den. 381 U.S. 956; *U.S.* v. *Achilli*, 7 Cir., 1956, 234 F.2d 797, 805-6, afd. 353 U.S. 373.

The defense points out such circumstances as the following:

1. the Doctor's forgetfulness: he couldn't say when testifying whether he was 60 or 61 years old, because he didn't recall the exact year of his birth, and he couldn't remember in which years he attended Brown University or the year he was admitted to practice medicine in Illinois;

2. the lengthy workday he habitually followed, running to twelve hours;

3. he was under treatment for diabetes, hypertension, obesity and sinusitis in 1957 and for Bell's palsy in 1959;

4. his records were kept by a receptionist-secretary who had neither training nor experience in bookkeeping;

5. his tax returns were made out by Robert Neal, who had only an eighth grade education and who was 75 years old at the time of the trial;

6. he saw three types of patients: (a) those sent by welfare organizations, (b) those referred to him by

attorneys, and (c) those he saw in connection with his duties as police surgeon for the City of Chicago at the lockup at 11th and State Streets in Chicago;

7. he did make his books and records available for examination.

Under all these circumstances, the defense feels that the Doctor was admittedly careless, but that there is no showing of intentional evasion.

On the other hand, the government has shown a substantial understatement of gross income for a number of years, which has been held to be evidence of wilful intent to evade. *Epstein* v. *U. S.*, 6 Cir., 1967, 246 F.2d 563, 566, and cases there cited, cert. den. 355 U.S. 868.

The returns were prepared from documents and papers supplied by the defendant; some of the figures given Mr. Neal were only estimated. In two of the years in question, Dr. Mansfield's expenses as provided for preparation of his returns exceeded the income figures provided. Mr. Neal testified that in preparing the returns he reduced the amount of these expense deductions because he did not want the Doctor to get into any trouble, and when he told the defendant about that, the defendant was agreeable to the changes. In going through the defendant's records, Agent Armstrong came upon an unsigned, unfiled tax return for 1958 which showed substantially higher gross receipts than the return which was actually filed for that year. The defendant objected to the fact that a photocopy was made of this return form without his knowledge, but Agent Armstrong testified only from his own recollection as refreshed from his own notes. The photocopy was not offered in evidence or otherwise used during the trial.

Although the sole prepayment of taxes was made on his wages from the Police Department, which represented only one of the three sources of his income, the defendant secured annual refunds of several hundreds of dollars in the years in question. He could not have believed that he was entitled to these substantial refunds when no taxes were being prepaid on his private medical practice.

A full disclosure of income records was not made to the examining agents. The defendant told Special Agent Sandroff in October 1962 that he had five or six personal injury patients per month, which was markedly lower than the actual figure. In November 1960 when visiting the Internal Revenue office he made no mention of his personal injury patients. He told Mrs. Anderson that he had not reported some income from welfare patients, but he always withheld the receipts from the personal injury claimant patients. As this was one of the most lucrative aspects of his practice, withholding these records was inconsistent with his assertions that he put his books and records at the agents' disposal. Conduct, the effect of which is to conceal or mislead, suggests wilfulness. *Spies* v. *U. S.*, 317 U.S. 492, 499 (1943).

There was ample evidence from which the Trial Judge could have decided beyond a reasonable doubt that defendant wilfully attempted evasion. *U. S.* v. *Peterson*, 7 Cir., 1964, 338 F. 2d 595, 598, cert. den. 380 U.S. 911 (1965).

In computing the correct income and deductions, the government produced in evidence cancelled checks paid to the Doctor by some thirty attorneys for services to clients with claims for personal injury. Also introduced

in evidence were cancelled checks from the Illinois Public Aid Commission and the Treasurer of Cook County for services to individuals on public relief, in addition to payroll checks from the City of Chicago for services as public surgeon. These were checked as to date and amount against defendant's deposit slips. A number of checks listed on these slips running to total sums in excess of $14,000 for each of the years involved were not in evidence. Many of the checks in evidence had not been deposited but had been cashed or negotiated to others as shown by endorsements. The total cash deposits listed in the deposit slips were not included in gross income because the income recorded in the defendant's daily log books was included as a result of a conference in May 1963, in the Intelligence Division's offices, where Dr. Mansfield, in the presence of his attorney, said that the amounts in his daily log books represented cash receipts which he used to pay expenses. The log books were considered to be a more accurate record than the cash deposits. The computations did include cash retained by the defendant when he deposited only a part of one of the checks in evidence. Interest earned on savings for 1960 were included and consideration given to amounts withheld from the Police Department pay checks. Nontaxable deposits such as tax refund checks, loans, and a check from an attorney which was not considered to be for medical service income, were eliminated.

This method of reconstruction was properly applied. *Beard* v. *U. S.*, 4 Cir., 1955, 222 F.2d 84, cert. den. 350 U.S. 846; *Percifield* v. *U. S.*, 9 Cir., 1957, 241 F.2d 225, 229.

The defendant's accountant disputed the government's analysis of allowable deductions by sums which would have made little inroad on the indisputable fact that there was highly substantial unreported income. The Trial Court which gave due consideration to all of the testimony accepted the government's analysis of the allowable deductions. On this record we are not disposed to disturb the Trial Judge's findings. *Glasser* v. *U. S.* (1942) 315 U.S. 60, 80.

The judgment of the District Court is affirmed.

AFFIRMED.

APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Friday, September 8, 1967.

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. CLARENCE E. MANSFIELD, Defendant-Appellant.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 15802

IT IS ORDERED by the Court that the petition for a rehearing *en banc* of this cause be, and the same is hereby, DENIED.